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McDERMOTT, WILL & EMERY

January 15, 2003

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 - 12th Street, S.W.
Washington, D.C. 20554

Re: Improving Public Safety Communications in the 800 MHz Band, WT Docket No.
02-55; *Ex Parte*

Dear Ms. Dortch:

Cinergy Corporation ("Cinergy"), through undersigned telecommunications counsel, hereby supports the "Motion for Extension of Time" filed by the Cellular Telecommunications & Internet Association ("CTIA") on January 13, 2003, in the above-captioned matter. By its Motion, CTIA has requested the Commission to extend the deadlines for submitting comments and reply comments in response to the "Supplemental Comments of the Consensus Parties," filed on December 24, 2002.

Cinergy is a multi-state electric and gas utility with extensive private land mobile operations in the 800 MHz band that could be seriously jeopardized by some of the proposals that have been advanced in this docket. Cinergy has participated fully in this proceeding through the submission of comments and reply comments, including comments on the so-called "Consensus Plan" filed by Nextel and a number of frequency coordination groups. As such, Cinergy has a keen interest in reviewing and commenting on the December 24 Supplemental Filing.

As noted in CTIA's Motion for Extension of Time, the proponents of the "Consensus Plan" filed a 150-page "Supplement" to their previous submissions on December 24, 2002, just prior to the holidays. On January 3, 2002, the Bureau issued a Public Notice requesting comments on the Supplement by February 3 and Reply Comments by February 18.¹

Cinergy agrees with CTIA that the serious issues raised in this proceeding, and the magnitude of the changes recommended by the Consensus Parties, warrant additional time for interested parties to review and submit responsive comments. The Supplemental filing, which was not made available to anyone outside the Consensus group prior to filing with the FCC, includes a large number of detailed proposals for new technical standards, coordination procedures, channel allocations, enforcement measures, operating restrictions, equipment standards, and other rules and policies that were only alluded to in their previous submissions.

Moreover, the Consensus Parties have attached to this filing an overriding condition that "any material modification of the Consensus Plan would eliminate the voluntary commitments of and cooperation among the affected licensees indispensable to its successful and expeditious implementation."² Thus, licensees such as Cinergy, whose radio operations would be significantly impacted by this plan, are presented with the choice of either supporting the plan "as is" or recommending its complete rejection. To the extent the FCC is even willing to consider the Consensus Group's challenge to adopt this plan "as is" and without material modification, the FCC must provide sufficient opportunity for Cinergy and other potentially-affected parties to fully review the plan and submit comments. Unlike other comments filed in this proceeding, the so-called "Consensus Plan" has been filed as an all-or-nothing proposition, thus increasing the stakes to licensees, the Commission and ultimately the public, if the plan is adopted "as is" and later determined to be beyond the Commission's authority, impractical to implement, or incapable of resolving Nextel's interference problem. Fundamental fairness requires that all parties have adequate time to thoroughly review and address these issues before the Commission takes the irreversible step of adopting this plan.³

Cinergy therefore urges the Commission to grant CTIA's Motion for Extension of Time, and to extend the comment and reply comment dates by at least four weeks.

¹ "Wireless Telecommunications Bureau Seeks Comment on 'Supplemental Comments of the Consensus Parties' Filed in the 800 MHz Public Safety Interference Proceeding -- WT Docket No. 02-55," *Public Notice*, DA 03-19 (rel. Jan. 3, 2003).

² Cinergy believes that the only "voluntary commitments" at issue in the Consensus Plan are Nextel's purported willingness to fund certain relocation expenses and cancel certain licenses.

³ Preliminary review of the Supplemental Comments reveals a number of inconsistencies between the text of the comments and the proposed rule language submitted in the appendices to the proposal. Thus, further consideration of this plan will also require consideration of whether the Consensus Parties are advocating what has been proposed in the "text" of the comments or what has been proposed in the suggested rule language.

Pursuant to the Commission's Rules, one copy of this letter is being submitted electronically through the Commission's Electronic Comment Filing System.

Very truly yours,

/s/ Shirley S. Fujimoto

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